

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 CARL FOUST,

12 Plaintiff,

13 v.

14 I. PEREZ, et al.,

15 Defendants.
16

No. 2:23-CV-0179-DAD-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint. See ECF No.
19 80.

20 This action currently proceeds on Plaintiff's original complaint. See ECF No. 17
21 (service order). Defendants waived service and filed their answer on February 5, 2024. See ECF
22 No. 30. After unsuccessful negotiations for an early settlement, the case was scheduled on
23 January 28, 2025. See ECF No. 81 (discovery and scheduling order). Plaintiff filed the pending
24 first amended complaint on January 24, 2025. See ECF No. 80.

25 The Federal Rules of Civil Procedure provide that a party may amend his or her
26 pleading once as a matter of course within 21 days of serving the pleading or, if the pleading is
27 one to which a responsive pleading is required, within 21 days after service of the responsive
28 pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a motion under Rule

12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all other situations, a party's pleadings may only be amended upon leave of court or stipulation of all the parties. See Fed. R. Civ. P. 15(a)(2).

Where a party files an amended complaint without the right to do so, it is properly stricken by the Court. See, e.g., Hardin v. Wal-Mart Stores, Inc., 813 F. Supp. 2d 1167, 1181 (E.D. Cal. 2011) (striking fourth amended complaint: "If an amended pleading cannot be made as of right and is filed without leave of court or consent of the opposing party, the amended pleading is a nullity and without legal effect."); Sexton v. Spirit Airlines, Inc., Case No. 2:21-cv-00898-TLN-AC, 2022 WL 976914 (E.D. Cal. March 31, 2022) (striking amended complaint); Guthrie v. Hurwitz, Case No. 1:18-cv-00282-AWI-BAM, 2018 WL 4005261, at *1 (E.D. Cal. Aug. 20, 2018) (striking amended complaint).

Here, Plaintiff's opportunity to amend as-of-right has expired and Plaintiff has neither sought leave of court nor obtained a stipulation to proceed on a first amended complaint. The first amended complaint filed on January 24, 2025, will, therefore, be stricken.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's first amended complaint, ECF No. 80, is stricken.

Dated: February 24, 2025



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE